



An
Bord
Pleanála

Board Order 06S.LT.0003

Planning and Development Acts 2000 to 2016

Planning Authority: South Dublin County Council

Planning Register Reference Number: SDQU05A/1 (S261A)

Application for Leave To Apply For Substitute Consent pursuant to section 261A (20)(a) of the Planning and Development Act 2000, as amended, by Shillelagh Quarries Limited care of SLR Consulting Ireland of 7 Dundrum Business Park, Windy Arbour, Dublin:

Development: Quarry at Aghfarrell, Brittas, County Dublin.

Decision

REFUSE leave to apply for substitute consent pursuant to section 261A (21)(c) of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to:

- the report and information provided by the planning authority,
- the submissions and observations on file,
- the planning, enforcement, registration and legal history of the subject quarry,
and
- the report of the Inspector,

the Board came to the following decision:

The Board is satisfied that the subject application comes within the scope of section 261A (21)(a) of the Planning and Development Act 2000, as amended, by virtue of its planning and legal history.

The Board is satisfied that development has been carried out at this site after the 1st day of February, 1990 which would have required Environmental Impact Assessment and that no such assessment has been carried out. This has already been established by the previous unsuccessful application for leave to apply for substitute consent (An Bord Pleanála reference number 06S.LS.0009) and is not contested. The requirements of section 261A (21)(c) of the 2000 Act are therefore satisfied.

The Board is satisfied that the requirements in relation to section 261 of the 2000 Act (quarry registration) have been fulfilled in so far as this quarry is concerned. The requirements of section 261A(24)(a)(ii) are therefore satisfied.

No planning permission has been granted in respect of the quarry (this is not contested by the parties).

Having particular regard to:

- the overall planning history of development of the site, including the following planning decisions:
 - o South Dublin County Council planning register reference number S99A/0016;
 - o An Bord Pleanála planning appeal reference number PL 06S.231371;
 - o An Bord Pleanála section 5 referral case reference numbers 06S.RL.2473 and 06S.RL.3162;
 - o An Bord Pleanála case reference 06S.LS.0009 (leave to apply for substitute consent under section 177D of the 2000 Act);

- the court judgements issued in relation to the quarry, in particular:
 - o the judgement of Costello J [1978] ILRM 85;
 - o the judgements of Hedigan J [2012] IEHC 257 and [2013] IEHC 92;
 - o the judgement of Baker J [2015] IEHC 838;

the Board concluded that the subject quarry cannot be considered to have commenced operation before the 1st day of October, 1964. The planning status of the quarry has been confirmed by An Bord Pleanála and by the High Court on a number of occasions, whereby claims that the quarry operations were a continuation of historical activities commenced before 1964 have been consistently rejected. The Board came to the view that to grant leave to apply for substitute consent on the basis of pre-64 commencement would run contrary to the rational and orderly application of the principles of proper planning and sustainable development. Therefore the requirements of section 261A(24)(a)(i) of the 2000 Act are not satisfied.

